



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Fred Erisman
Criminal District Attorney
Gregg County
Longview, Texas

Dear Mr. Erisman:

Opinion No. O-1500

Re: Whether the Commissioners' Court is empowered to arbitrarily refuse an application for assistance where there has been a full compliance with the requirements set forth in Article 6228, Revised Civil Statutes. What persons come within the meaning of the term "pauper" as used in Article 2351, Revised Civil Statutes?

Your letter of September 23 requesting an opinion from this department, wherein you have given us an able brief covering the above questions submitted, has been duly considered and received the attention of this department. Your questions propounded are briefly as follows:

- "1. Under the provisions of Article 6228 of the Revised Civil Statutes, is the Commissioners' Court empowered to arbitrarily refuse an application for assistance where there has been a full compliance with the requirements set forth in said article?
- "2. What persons come within the meaning of the term "pauper" as used in Article 2351 of the Revised Civil Statutes?"

The material portions of Article 6228, Revised Civil Statutes, 1925, as amended by the Acts of 1931, 42nd Leg., Chap. 256, provides:

Honorable Fred Erisman, Page 2

"Any widow who is the mother of a child or children under sixteen years of age, and who is unable to support them and maintain her home, may present to the Commissioners' Court of the county wherein she has resided for the preceding two years a sworn petition for aid showing:

"First: - Her name, time and place of her marriage, date of the death of her husband, or date of his confinement in the penitentiary or in an insane asylum, or date of his abandonment of her; names, sex, and the dates and places of their birth.

"Second: -Her length of residence in the State, her present residence, and her residence during each of the previous five years.

"Third: -All the property belonging to her and to each of her children, including any future or contingent interest she or any of them may have.

"Fourth: -The efforts made by her to support her children.

"Fifth: -The name, relationship, and address of each of her husbands relatives that may be known.

"By 'widow', as used herein, means a mother who is widowed by death or divorce, or whose husband has abandoned her for more than two preceding years, or whose husband is confined in the penitentiary or in a State Hospital for the insane.

"A copy of said petition and a notice of the time and place it will be presented to said Court shall be served on or mailed to the County Judge of said county at least five days before the time the court shall be requested in said petition to hear the same. When service is complete said Court shall examine under oath those who desire to be heard, and may subpoena witnesses; or the Court or the Court may refer said matter to a Commissioner to be appointed by it to hear said witnesses. Such

Honorable Fred Erisman, Page 3

Commissioner shall make a report to the Court stating the facts as proven before him. If the Court concludes that unless relief is granted the widow will be unable to properly support and educate her children, and that they may become a public charge, it may make an order directing a monthly payment to her, out of the County Funds, for the support of such children, not more than Fifteen (\$15.00) Dollars for one child, and Six (\$6.00) Dollars additional for each other child. Such allowance shall be discontinued as to any such child who reaches the age of sixteen. The Court shall have the right to refuse any such petition, and its action in so doing shall be final. The Court shall see that any widow receiving such aid is properly caring for her children. When it is found that she is not properly caring for her children, or that she is an improper guardian for them, or when the Court finds that she no longer needs such aid, it shall thereupon revoke at any time with or without notice any order made pursuant to this Article."

It is said in 21 R.C.L., p. 701, that:

"Care of the state for its dependent classes is considered by all enlightened people as a measure of its civilization, and the care of the poor is generally recognized as among the unquestioned objects of public duty, but in spite of this, the duty under the common law was purely moral and not legal. There is, therefore, no legal obligation at common law on any of the instrumentalities of government to furnish relief to paupers. The obligation to support such persons results only from statute . . ."

Our Legislature has, by statute, made it the duty of the Commissioners' Court to provide for the support of paupers or look after the welfare of the poor and indigent of the county. (Article 2351, Revised Civil Statutes). Such power and duty, however, is not to be confused with the operation of the statutes in question.

Article 6228, supra, being a special law, was intended apparently as but a step toward advanced social reform, following in the wake of many of the states that have enacted what is known as "Mothers'" Pension Act, yet this statute is materially different, and it is to be presumed that the Legislature intended such statute to fit in and blend with our constitutional and systematic form of government.

The sole question confronting us in examining the foregoing statute is whether or not the intent of the Legislature is expressed in plain and unambiguous language, and whether or not said statute is a permissive one rather than mandatory on the part of the Commissioners' Court.

"In construing statutes, courts look at the language of the whole act, and if they find, in any particular clause, an expression not so large and extensive in its import as those used in other parts of the statute, if, upon a view of the whole act they can collect from the more large and extensive expressions used in the other parts, the real intention of the Legislature, it is their duty to give effect to the larger expressions." Sutherland on Statutory Construction, Sec. 245, p. 324.

Sutherland on Statutory Construction, Section 460, p. 594, further states that the rule that "may" is to be interpreted as "shall" or "must" is not by any means uniform; its application depends upon what appears to be the true intent of the statute. See also, Sedgewick on Constitutional and Statutory Law; Rains vs. Herring, 68 Tex. 468, 5 S.W. 369.

Examining the larger expressions included in the language used in the last paragraph of said statute, it will be seen that the Legislature has delegated to the Commissioners' Court the power to conclude upon what conditions and under what circumstances relief may be granted and that this court is to determine whether or not the widow will be unable to properly support and educate her children and the further fact as to whether they may become a public charge. The court is further given the right to refuse any such petition, and its action in so doing is by the provisions of the Act made final.

That the Legislature so construed said act to be permissive and not mandatory is disclosed in Section 2 of the 1931 amendment, containing the emergency clause which reads as follows:

"The fact that the present law as to mothers' aid requires a residence of five years before hungry children can be fed or furnished clothing or opportunity for education by aid from the county, while no other State requires such long residence; that the Statute is not mandatory, but that this amendment will afford an opportunity to give aid when needed, and will enlarge the needy class of children to whom aid can legally be given, and will give to some widowed mothers the great privilege of rearing their children in their own homes, creates an emergency, and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days be suspended, and said Rule is hereby suspended, and that this Act take effect from and after its passage, and it is so enacted."

It is, therefore, the opinion of this department that the Commissioners' Court, under the provisions of Article 6228, Vernons' Revised Civil Statutes, is granted full and complete authority to pass upon such applications as duly presented thereunder, and such statute being a permissive one, the court's action thereunder is not subject to review.

As to your second question, the term "pauper" is too broad and comprehensive as would permit an opinion from this department laying down any specific formula for determining what persons are or may be included within its meaning. For a general rule covering same, however, we refer you to 21 Ruling Case Law. § 5, pp. 704-5:

"The words 'pauper' and 'indigent' convey the meaning that the person has neither money nor estate, is without credit, and is unable to maintain himself because of inability to work or to obtain employment, and a person who has property immediately available for his support is not a pauper, and is properly refused public aid as such. But a person may be a pauper though he has property of his own, if it is not available for his immediate relief, or is manifestly disproportionate

Honorable Fred Erisman, Page 6

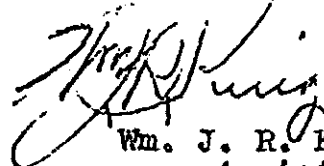
to his needs, Though a person may be poor and without property, still if he has credit, and by his own promise to pay, or request, can have his condition relieved, he is not a person entitled to relief under the poor laws. The question as to the sufficiency of a man's property or credit to take him from the pauper class is for the jury."

Trusting the above answers your request, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By


Wm. J. R. King
Assistant

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APPROVED NOV 7, 1939


(s) Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
opinion committee
By BWB
chairman